



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

IN THE MATTER OF NJ TRANSIT'S REQUEST) ORDER APPROVING EXEMPTION
FOR EXEMPTION FROM THE MAIN EXTENSION)
RULES AT N.J.A.C. 14:3-8.8(b) (1))
) DOCKET NO. EO09050408

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by New Jersey Transit ("Petitioner" or "NJT") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good. The Petitioner is seeking to install electrical service from a ground power source at the Gladstone Rail Yard located in the Borough of Peapack ("Gladstone Rail Yard"). The Gladstone Rail Yard is located in an environmentally sensitive planning area, PA5, an area not designated for growth.

Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of installing the electrical service.

The total cost from JCP&L to install the electric service is \$41,014.95, including the \$10,744.63 CIAC Gross-Up @ 35.6%.

The Petitioner submits that it is exempt from the requirements for the costs of the extension pursuant to N.J.A.C. 14:3-8.8(b)(1), because the project will provide a significant public good, as described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that to obtain an exemption based on significant public good, a Petitioner must demonstrate to the Board that all of the following criteria are met: (1) the project or activity served by the extension would provide a significant benefit to the public or to the environment; (2) the project is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth; and (3) there is no practicable alternative means of providing the benefit while still complying with this subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth ("OSG") and other State agencies.

The Petitioner presents the following as to each criterion in N.J.A.C. 14:3-8.8(h):

1. **Whether the Project or Activity Served by the Extension will Provide a Significant Benefit to the Public or to the Environment**

Petitioner argues that the new system will provide a significant benefit to the public and the environment. The new system will provide compressed air and electrical service to the train sets from a new ground power source. Currently the trains that lay over at the yard remain energized with their diesel engines running to maintain air brake pressure and climate control in the train cars. This change in source of power enables the trains to be shut down, reducing noise and emission levels associated with the yard. Furthermore, better transit system performance will promote greater ridership and use of public transportation. The public transportation system provides a significant benefit to the public as a cleaner and more efficient mode of transportation. In order to maintain a rail system, the trains must be maintained overnight and air brakes must be activated to prevent movement and injury.

2. **That the project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies**

Here, Petitioner states the project is consistent with smart growth because of the smart growth benefits associated with the use of public transportation. Currently Petitioner lays over train sets at the site for use the next day. These train sets must remain energized and running to maintain airbrake pressure. The benefits of public transportation will be improved with the new system as it allows the trains to shut down, reducing noise and emission levels. In addition, the NJT trains provide a cleaner transportation alternative to the surrounding community.

3. **There is no practicable alternative means of providing the benefit while still complying with this subchapter**

Petitioner notes that there is no practicable alternative means of providing the benefit while still complying with this subchapter. The train rail yard is established; relocating the yard would not be cost effective. The area surrounding Peapack-Gladstone is all PA5, non-growth.

The following steps were taken by Board Staff and are part of the record that the Board has reviewed.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the OSG and the Department of Environmental Protection ("DEP"). Karl Hartkopf, Planning Director of the Office of Smart Growth, has identified that the NJ Transit Gladstone Rail Yard is located in an Environmentally Sensitive Planning Area, PA5, as provided by the New Jersey State Development and Redevelopment Plan ("State Plan"). It is not located in an area designated for growth.

Director Hartkopf, in a letter dated July 21, 2009, stated that "[d]ue to the cumulative effect of the project meeting smart growth principles and the clear public benefit, OSG feels that the exemption is appropriate." First, the 2001 State Plan identified Peapack-Gladstone as a Proposed Village Center. According to OSG, "Peapack-Gladstone meets the Village center criteria of compact and center-based development offering a small core with public facilities and community activities within a short walking distance from its two train station." Second, the exemption would provided a significant benefit to the public because the train station serves the "greater commuting public." Lastly, the project offers "an alternative to single use vehicles transportation to destinations along the Morris – Essex Lines."

The Office of Planning and Sustainable Communities at the DEP states that the exemption is consistent with smart growth principles. DEP noted that the rail yard and station "are a vital public transportation facility serving smart growth areas and employment centers to the east and north." In addition, DEP believes that "the exemption should be granted as it provides a significant benefit to the public and the environment, particularly if it results in decreased carbon emissions and pollutant levels."

DISCUSSION:

The Board's jurisdiction over utility extensions is found at N.J.S.A. 48:2-27, which provides that the Board "may ...require any public utility to establish, construct, maintain and operate any reasonable extension," where the extension is: (1) reasonable and practicable; (2) will furnish sufficient business to justify the construction; and (3) when the financial condition of the public utility reasonably warrants the original expenditure. In considering the requested exemption, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board has reviewed the recommendation of the OSG, where it notes that the rail yard and station are located in a Planning Area 5 or Environmentally Sensitive or non-growth area. OSG further notes that the project is consistent with the State Plan.

As to the remaining statutory requirements, the Board must ascertain that the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. Jersey Central Power and Light (JCP&L) was sent a letter on May 27, 2009. JCP&L responded to this request on June 4, 2009 that if the Board orders the exemption and the return of the CIAC. JCP&L has no objection to NJ Transit's requested exemption provided that relief is ordered by the Board.

After reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(b)(1) for a project that will provide a significant public good are met. Specifically, the Board FINDS, that the rail yard, station and new power system do constitute a significant benefit to the public, are consistent with smart growth or that the benefit of the extension will outweigh the benefits of smart growth, and that there are no practicable alternative means of providing the benefit.

First, the Board FINDS that the rail yard and station, including the new power system, constitute a significant benefit to the public. The rail yard and station provide public transportation to the commuting public. The new power system will reduce the noise and emissions of the station as well as allow the trains to shut down when idle on the yard. The Board notes that this project does not constitute an expansion of the yard, but provides infrastructure to allow trains which currently idle at the yard to shut down overnight. Moreover, as noted by OSG, public transportation provides an alternative to single use vehicles along the Morris – Essex line. DEP also stated that the new system may reduce carbon and pollutant levels associated with the yard and station. Therefore, the proposed system at the rail yard and station provide a significant benefit to the public.

Second, the Board FINDS that the rail yard and station, including the new power system, are consistent with smart growth and the benefits of the project outweigh the benefits of smart growth. OSG states that Peapack-Gladstone meets the criteria of a Village Center.

Additionally, the new system will improve the already beneficial public transportation offered by the rail yard and station. DEP commented that the new system is consistent with smart growth in that it continues to provide vital public transportation to the area's residents and employment centers.

Finally, the Board FINDS that there is no practical alternative means of providing the benefit while still complying with this subchapter. The rail yard and station are already in use and the new power system is the only means of lowering pollution levels and increasing efficiency of the current electrical system.

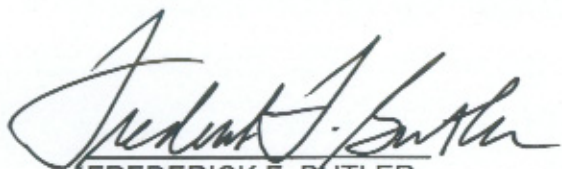
Pursuant to N.J.A.C. 14:3-8.8(k)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore, the Board HEREBY ORDERS that the distribution of costs of extending electrical service to the rail yard and station shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

DATED: 9/16/09

BOARD OF PUBLIC UTILITIES
BY:



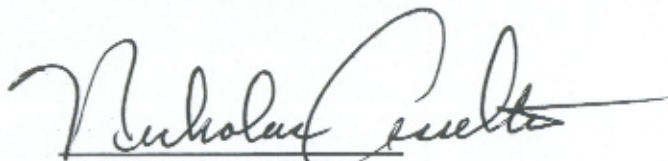
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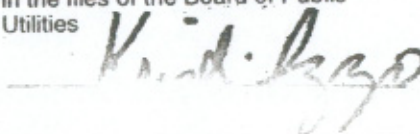
ELIZABETH RANDALL
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF NEW JERSEY TRANSIT PETITION FOR AN EXEMPTION
FROM MAIN EXTENSION RULES AT N.J.A.C.14:3-8.8(b) (1)

Docket No. EO090050408

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